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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/511,951	10/21/2004	Detlef Busch	05581-00131-US	8785

23416 7590 02/07/2008
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EXAMINER	
MCDOWELL, SUZANNE E	

ART UNIT	PAPER NUMBER
1791	

MAIL DATE	DELIVERY MODE
02/07/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/511,951	BUSCH ET AL.	
	Examiner	Art Unit	
	Suzanne E. McDowell	1791	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *13 November 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *10-26* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *10-26* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 10-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oles et al. (US Patent 4,769,205) in view of Davidson et al. (US Patent 6,815,048). Oles et al. teaches a method of in-mold labeling by placing a pair of labels (84) in mold recesses (24), closing the molds (20 and 22) about a parison (106), lowering the blow head (46) to engage the upper end of the parison and to flow blow air into the parison to expand it, during which expansion the labels are bonded to the sides of the resultant container (column 5, lines 3-10).

Regarding claims 10-26, Oles et al. does not teach the label as claimed. Davidson et al. teaches the label as claimed, including stretching a web containing a beta-form (column 2, lines 20-24) of a polypropylene-based homopolymer, or a random or block copolymer or terpolymer (column 3, lines 60-62) and containing 0.0001 to 5 weight % of a nucleating agent such as a dicarboxamide (column 4, lines 10-17), whereby the stretching forms a film with microvoids therein. Davidson et al. further teaches that the voids are induced by the change of the beta-form into the alpha-form of polypropylene during stretching (column 3, lines 16-20). It would have been obvious to a person of ordinary skill in the art at the time of the invention to use the label taught by Davidson et al. in the method taught by Oles et al., particularly since Davidson et al. teaches that the label can be used in in-mold labeling (column 1, lines 40-44), and Oles et al. is a method for in-

mold labeling. The motivation to combine the teachings of Davidson et al. and Oles et al. is because both are in the same field of endeavor and solve the same problem, that of in-mold labeling.

Regarding claims 12-14, Oles et al. does not specifically teach the film density or porosity. Regarding claims 25-26, Oles et al. does not specifically teach that the labeled container does not have an orange peel. Davidson et al. teaches using the same polypropylenes and nucleating agents in the same ratios as those of the instant claims, which would of necessity result in a film with the claimed characteristics, such as density and porosity and lack of orange peel problems.

Regarding claims 23 and 24, Davidson et al. teaches using a stenter process at 128°C or 144°C, cooling the film and winding it onto reels (column 6, lines 53-57), or a stenter process at 153°C or 135°C, cooling the film and winding it onto reels (column 7, lines 11-16). Temperatures cooler than 128°C are as claimed in claims 23 and 24.

Response to Arguments

3. Applicant's arguments filed 11/13/07 have been fully considered but they are not persuasive. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Davidson et al. teaches that the label can be used in in-mold labeling (column 1, lines 40-44), and Oles et al. is a method for in-mold labeling. Contrary to applicant's argument, examiner

does not need to demonstrate an "explicit disclosure on why to use a certain film for a specific process". The teachings of the prior art are that Davidson et al. label can be utilized in an in-mold labeling process. It would have been obvious to a person of ordinary skill in the art to therefore use this label in an in-mold labeling process. There is a reasonable expectation of success that a label taught as being able to be utilized in an in-mold labeling process would in fact function in such a process.

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Suzanne E. McDowell whose telephone number is (571) 272-1205. The examiner can normally be reached on Mon and Th 5:30am-2pm, Tues 10am-6:30pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Johnson can

be reached on (571) 272-1176. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Suzanne E. McDowell/
Primary Examiner, Art Unit 1791